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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* KWASI ADDO ASARE, ATTILA BARTA,  
RICHARD D. HUDDLESTON, and DANIEL EVERETT JEMIOLO

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Appeal 2008-002519  
Application 10/725,612  
Technology Center 2100

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Decided <sup>1</sup>: June 8, 2009

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Before ALLEN R. MACDONALD *Vice Chief Administrative Patent Judge*,  
JEAN R. HOMERE, and STEPHEN C. SIU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> The two month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date.

## STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1, 2, 4, 6-8, 10, 11, 13, and 15. Claims 3, 5, 9, 12, and 14 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### *The Invention*

The disclosed invention relates generally to installation of an application component (Spec. 1), including identifying target platform requirements for the installation and dependencies for the application (*id.* 5).

Independent claims 1 and 7 are illustrative:

1. A component installation method comprising the steps of:

identifying target platform requirements for installation of a subject application component within a target specific installation script;

further identifying a listing of dependencies for said subject application and at least one specified relationship between said subject application and individual ones of said dependencies;

enforcing both said target platform requirements and said at least one specified relationship prior to installing said subject application component; and,

aborting said installation where either one of said target platform requirements and said at least one specified relationship cannot be enforced, wherein said enforcing step comprises the steps of

determining whether all required ones of said dependencies can be accessed in said target platform,

for each required one of said dependencies which cannot be accessed in said target platform, locating and installing said required one of said dependencies in said target platform, and

updating dated ones of said required ones of said dependencies which can be accessed in said target platform with updated versions of said required ones of said dependencies.

7. A system for installing application components in a target platform, the system comprising:

a component installation engine configured to install application components and respective dependencies over a component distribution system, the component installation engine including a communicative coupling to a repository of updated ones of said dependencies;

a script processor coupled to said engine and programmed to parse target specific installation scripts to identify both a listing of dependencies for the application components and at least one specified relationship between the application components and individual ones of said respective dependencies; and,

a requirements verification processor programmed to enforce both target platform requirements for installing the application components and said at least one specified relationship prior to installing the application components, wherein

the component installation engine updates dated ones of said dependencies with said updated ones of said dependencies prior to installing said application components.

*The References*

The Examiner relies upon the following references as evidence in support of the rejections:

Donohue	US 6,202,207 B1	Mar. 13, 2001
Zimniewicz	US 6,744,450 B1	Jun. 01, 2004
		(filed May 05, 2000)

*The Rejections*

1. The Examiner rejects claims 7 and 8 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.
2. The Examiner rejects claims 1, 2, 4, 6-8, 10, 11, 13, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Zimniewicz and Donohue.

ISSUE #1

The Examiner finds that “the systems [recited in claims 7 and 8] appear to lack the necessary physical components (hardware) to constitute a machine or manufacture under § 101 . . . [and] can be . . . interpreted as . . . software *per se*” (Ans. 3).

Appellants assert that “[t]he claimed invention . . . is not directed to software *per se*, but instead, to a system . . . [that] includes functional components” (App. Br. 5).

Did Appellants demonstrate that the Examiner erred in finding that claims 7 and 8 are directed to non-statutory subject matter?

## ISSUE #2

The Examiner finds that “Donohue discloses . . . updating dated ones of said required ones of said dependencies which can be accessed in said target platform with updated versions of said required ones of said dependencies (see Column 9: 59-63 . . .” (Ans. 6).

Appellants assert that “Zimniewicz fail[s] to teach or suggest updating” (App. Br. 8).

Did Appellants demonstrate that the Examiner erred in finding that Donohue fails to disclose or suggest updating dependencies as claimed?

## ISSUE #3

Appellants assert that “the step of updating is part of the step of enforcing, and thus, both steps are performed prior to installing the subject application component [in claim 1]” (App. Br. 6) while Donohue discloses “the software has already been installed [prior to the enforcing/updating steps]” (App. Br. 7). Based on these assertions, Appellants argue that “Donohue teaches away from the claimed limitation” (App. Br. 8).

Did Appellants demonstrate that the Examiner erred in finding that the combination of Zimniewicz and Donohue discloses or suggests enforcing/updating prior to installing the subject application component?

## FINDINGS OF FACT

The following Findings of Facts (FF) are shown by a preponderance of the evidence.

1. Donohue discloses “a comparison between available software updates and installed software on the local computer system to identify which are relevant” (col. 5, ll. 55-58) including comparing “the available relevant updates with update criteria held on the local computer system . . . and then automatically download[ing] . . . software updates which satisfy the predefined criteria” (col. 5, ll. 58-62).
2. Zimniewicz discloses “[d]uring the installation process, the Setup Manager 79 utilizes the services of a Dependency Manager 85 to ensure that the required dependencies of the application programs within a suite are met. This ensures that the installation may proceed through each phase without error, and so that the application programs may run on the user’s system once installed” (col. 7, ll. 9-15).

## PRINCIPLES OF LAW

### *35 U.S.C. § 101*

“A ‘machine’ is proper statutory subject matter under § 101 . . . for the purposes of a § 101 analysis, it is of little relevance whether [the claim] . . . is directed to a ‘machine’ or a ‘process,’ as long as it falls within at least

one of the four enumerated categories of patentable subject matter . . .” *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368,1372-73 (Fed. Cir. 1998) (holding that transformation of data by a machine through a series of mathematical calculations was a practical application of a mathematical algorithm because it produced a useful, concrete and tangible result and was therefore not unpatentable).

### *Obviousness*

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007).

“A reference may be said to teach away when a person of ordinary skill, upon [examining] the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *Para-Ordnance Mfg., Inc. v. SGS Importers Int’l, Inc.* 73 F.3d 1085, 1090 (Fed. Cir. 1995) (quoting *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994)).



### ANALYSIS (ISSUE #1)

Appellants assert that “[t]he claimed invention . . . is not directed to software *per se*, but instead, to a system . . . [that] includes functional components” (App. Br. 5). We agree with Appellants. Claims 7 and 8 recite a system comprising an installation engine and processor. While the Examiner states that the claimed system “can be . . . interpreted as . . . software *per se*” (Ans. 3), the Examiner has not demonstrated how an engine and a processor, which appears to be hardware components, are merely “software *per se*”.

Accordingly, we conclude that Appellants have met their burden of showing that the Examiner erred in rejecting claims 7 and 8 with respect to issue #1.

### ANALYSIS (ISSUE #2)

Appellants’ arguments have treated claims 1, 2, 4, 6-8, 10, 11, 13, and 15 as a single group which stand or fall together with respect to issue #2. Therefore, we select independent claim 1 as the representative claim for this group. *See* 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner finds that Donohue discloses the updating step as claimed. Appellants have neither shown nor asserted that Donohue fails to teach or suggest the updating step but merely argue that Zimniewicz fails to teach or suggest the updating step. One cannot show nonobviousness by attacking references individually where the rejections are based on

combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413 (CCPA 1981). Therefore, we are unpersuaded by Appellants' argument.

For at least the aforementioned reasons, we conclude that Appellants have not sustained the requisite burden on appeal in providing arguments or evidence persuasive of error in the Examiner's rejection of claim 1, or claims 2, 4, 6-8, 10, 11, 13, and 15, which fall therewith as being obvious over Donohue and Zimmiewicz with respect to issue #2.

#### ANALYSIS (ISSUE #3)

Appellants' arguments have treated claims 1, 2, 4, 6-8, 10, 11, 13, and 15 as a single group which stand or fall together with respect to issue #3. Therefore, we select independent claim 1 as the representative claim for this group. *See* 37 C.F.R. § 41.37(c)(1)(vii).

As detailed above, Donohue discloses downloading available software updates after comparing the updates with installed software (FF 1). Thus, the "software updates" are available (and therefore "updated") prior to downloading since the software updates of Donohue must be available in order to compare with installed software and perform downloading subsequently when a match is determined. Therefore, we disagree with Appellants' argument that Donohue fails to teach or suggest this feature.

Even assuming Donohue discloses an embodiment in which enforcing or updating is performed after installing a software component, we disagree

with Appellants that such a disclosure would constitute a “teaching away.” “[T]he prior art’s mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed ...” *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004). In the present case, Appellants have not demonstrated that Donohue or Zimniewicz criticizes or discredits updating software prior to installing a software component. For this additional reason, we are not persuaded that Donohue “teaches away.”

In addition, as set forth above, Zimniewicz discloses updating dependencies (i.e., ensuring that dependencies within a suite are met) such that the “installation may proceed . . . without error” (FF 2) such that in order to perform the installation “without error” in Zimniewicz, dependencies within a suite must first be met. Therefore, in Zimniewicz, updating the dependencies must be performed prior to installation in order to ensure that the “installation may proceed . . . without error.” For this additional reason, we are unpersuaded by Appellants’ argument.

For at least the aforementioned reasons, we conclude that Appellants have not sustained the requisite burden on appeal in providing arguments or evidence persuasive of error in the Examiner’s rejection of claim 1, or claims 2, 4, 6-8, 10, 11, 13, and 15, which fall therewith as being obvious over Donohue and Zimniewicz with respect to issue #3.

### CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellants have failed to demonstrate that the Examiner erred in:

1. finding that Donohue fails to disclose or suggest updating dependencies as claimed (issue #2),
2. finding that the combination of Zimmiewicz and Donohue discloses or suggests enforcing/updating prior to installing the subject application component (issue #3),

However, Appellants have demonstrated that the Examiner erred in finding that claims 7 and 8 are directed to non-statutory subject matter (issue #1).

### DECISION

We affirm the Examiner's decision rejecting claims 1, 2, 4, 6-8, 10, 11, 13, and 15 under 35 U.S.C. § 103. We reverse the Examiner's decision rejecting claims 7 and 8 under 35 U.S.C. § 101.

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner's decision is affirmed. See 37 C.F.R. § 41.50(a)(1).

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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